88- 1821

NO._____

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In The
Supreme Court of the United States

October Term, 1988

JOSEPH A. MARI,

Petitioner,

v.

EULA MAE GREEN,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WYOMING

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April 1989

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WYOMING

QUESTIONS PRESENTED FOR REVIEW

1. Is Wyoming jurisdiction proper over a Colorado citizen who signs and files a deed conveying Wyoming real property?

2. Does full faith and credit prohibit a Wyoming court from exercising jurisdiction over a Colorado citizen who conveys Wyoming real property pursuant to a Colorado judgment?

3. Is the power to exercise jurisdiction over a non-resident diminished by a potential judicial-immunity defense arising from the fact that the non-resident acted as a court commissioner?

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Opinion Below

The opinion below is reported at _____ P. 2d _____ (Wyo. 1989). It is appended hereto as Appendix A. At Appendix B is the "Order" entered by the trial court, dismissing Petitioner's complaint for want of *in personam* jurisdiction. At Appendix C is the trial court's decision letter.

Jurisdiction

The judgment of the Wyoming Supreme Court was entered January 9, 1989 and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257 (3).

Constitutional Provisions Involved

Petitioner asserts that the decision of the Court below is in contravention of the Due Process Clause of Amendment XIV, United States Constitution, Section 1, Clause 2: "nor shall any State deprive any person of . . . property without due process of law; . . ." In addition Petitioner asserts that, by implication, the Court below has improperly applied the full faith and credit clause of Section 1, Article IV, United States Constitution: "Full faith and credit shall be given in each state to the . . . judicial proceedings of every other state."

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NO._____

JOSEPH A. MARI,

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EULA MAE GREEN,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WYOMING

Statement of the Case

Petitioner owned a parcel of real property in Wyoming. He constructed a commercial building and leased the property to the United Parcel Service.

In 1987 a Colorado state court with personal jurisdiction over the Petitioner entered a decree of divorce in which it awarded the subject Wyoming real property to Petitioner's ex-wife. Petitioner appealed the divorce decree. While the appeal was pending, the Colorado court entered an order directing Petitioner to deed the Wyoming property to his ex-wife. No further action was taken by the Colorado court to compel Petitioner personally to comply with that order.

The Colorado court then appointed Respondent as a

Court Commissioner to convey the Wyoming real property. Respondent, while in Colorado, signed a deed purporting to convey the Wyoming property to Petitioner's ex-wife. Respondent then delivered the deed, directly or through an agent, to the local Wyoming register of deeds, where the deed was filed of record. Concurrently with the deed, Respondent as Court Commissioner also signed and filed a document purporting to assign the lease on the subject property to Petitioner's ex-wife.

Petitioner filed suit against Respondent in the Carbon County, Wyoming, District Court seeking damages and a declaratory judgment decreeing that the deed to the subject property signed by Respondent was void and of no effect. Respondent was personally served with process. Despite the fact that the subject real property conveyed by Respondent was located in the court's district, the trial court dismissed the complaint on the grounds that it did not have *in personam* jurisdiction over Respondent. The Wyoming Supreme Court agreed.

In essence, the court below ruled that the Wyoming long-arm statute did not extend to Respondent. By its terms, the Wyoming long-arm statute extends to maximum permissible constitutional limits[1]. The trial court's decision therefore was an implicit holding that a non-resident's conveyance of Wyoming real property is not a minimum contact with the state. Instead, the court determined that conveying real property in the forum state was a simple and isolated act, and because it was by court order it was not a voluntary undertaking. The Wyoming court held that it cannot consider whether a court of Colorado can directly affect title to real property in Wyoming.

---

[1] Section 5-1-107(a), Wyoming Statutes (1977, as amended): "A Wyoming court may exercise jurisdiction on any basis not inconsistent with the Wyoming or United States constitution."

Petitioner appeals from the decision of the Wyoming Supreme Court which affirmed the trial court's dismissal for lack of *in personam* jurisdiction.

FEDERAL CONSTITUTIONAL QUESTION

The constitutional question presented is whether the Respondent's act of conveying real property exceeds those minimum contacts in the forum state required to satisfy the Due Process Clause, thus to subject a citizen of one state to the jurisdiction of the courts in another state. At issue is the application of the doctrines developed by this Court in establishing the constitutional parameters of *in personam* jurisdiction. Can a non-resident remain outside the forum state's jurisdiction while conveying that state's real property?

A second constitutional question is implicit: does the Full Faith and Credit clause preclude Wyoming jurisdiction merely because the non-citizen's acts were compelled by Colorado court order?

The federal constitutional questions were raised by the motion to dismiss the complaint. The trial court, with whom the court below agreed, determined that by the act of conveying real property Respondent "did not purposefully avail herself the privilege of acting in Wyoming, nor did her activities have substantial enough connection with the forum state to make the exercise of jurisdiction over her reasonable." District Court Opinion Letter, attached at Appendix C hereto.

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THIS COURT, AND OTHER STATES, DEFINING THE PARAMETERS OF **IN PERSONAM** JURISDICTION.

Generally, as has been defined primarily in the context of corporate activities and business relationships, jurisdiction is proper where a non-resident's activities satisfy the "minimum contacts" and "fair play and substantial justice" tests which have been refined and elaborated. The universe of those business relationships has been divided into two categories: (1) The continuous and systematic business activities which will subject a non-resident to jurisdiction even when the cause of action sued on is unrelated to those business activities. *International Shoe Company v. State of Washington,* 326 U.S. 310; *World-Wide Volkswagen Corporation v. Woodson,* 444 U.S. 286. (2) The type of isolated or single act which will subject the non-resident to jurisdiction in regard to a suit arising from the particular act itself. *McGee v. International Life Insurance Company,* 355 U.S. 220; *Snyder v. Smith,* 736 F. 2d 409 (7th Cir. 1984), certiorari denied 469 U.S. 1037; *Kulko v. Superior Court of California in and for the City and County of San Francisco,* 436 U.S. 84. This Court has acknowledged the distinction between the two categories of "general jurisdiction" and "special jurisdiction". *Helicopteros Nacionales de Columbia, S.A. v. Hall,* 466 U.S. 408.

The case at bar presents a unique and important particular situation within the special jurisdiction category: where a non-resident conveys forum-state real property under authority of a foreign judgment. Petitioner respectfully submits that the decision of the Wyoming Supreme Court is directly contrary to the holdings of this Court, in that a non-resident who conveys forum-

state real property has "purposefully availed" herself of the recording statutes and real property law of the forum state, and can reasonably expect to be "haled into court" there. *McGee, supra; Hanson v. Denckla,* 357 U.S. 235; *World-Wide Volkswagen, supra.* The Wyoming Supreme Court's decision is also contrary to the decisions of other state courts, e.g. *Werner v. Werner,* 526 P. 2d 370 (Wash. 1974), in which the act of notarizing a deed to forum-state property was held sufficient to establish jurisdiction. It would therefore be appropriate for this Court to clarify the applicability of the *International Shoe* business cases to a situation involving real property.

2. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THIS COURT WHICH PREVENT A STATE FROM INTERFERING WITH ANOTHER STATE'S SOVEREIGNTY OVER ITS OWN LAND.

A court of one state has no power to directly affect title to real property located in another state. *Fall v. Eastin,* 215 U.S. 1; *Kane v. Kane,* 577 P. 2d 172 (Wyo. 1978). Although state sovereignty appears to be in question where, as here, the dispute concerns real property, the Court has commented that the question "must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause." *Insurance Company of Ireland v. Compagnie des Bauxites de Guinee,* 456 U.S. 694, 702-703 n. 10. Intertwined with the due process and sovereignty components of the issue are important policy considerations. As discussed in *World-Wide Volkswagen, supra,* the relevant factors are the "forum State's interest in adjudicating the dispute . . . ; and the shared interest of the States in furthering fundamental substantive social policies . . . " 444 U.S. 286, 292. Policy analysis must necessarily begin with the undeniable interest of the forum state in the real property within its borders. *Anderson v. Perry,* 667

P. 2d 1155, 1158 (Wyo. 1983), quoting *Dwyer v. District Court, Sixth Judicial District,* 188 Colo. 41, 532 P. 2d 725 (1975). Would the State of Colorado accede to the power of a Laramie, Wyoming, court to directly convey a ski lodge in Aspen? Not likely.

By holding that it cannot exercise jurisdiction over the non-resident who signed the deed conveying the subject property, the State of Wyoming has determined that it is powerless to prevent the State of Colorado from directly affecting, and conveying, Wyoming property. The courts of each state should exercise jurisdiction over anyone, regardless of citizenship, who conveys, real property within its borders.

The courses of modern commerce and matrimony make commonplace not only the ownership of real property by non-residents, but also the inevitable need for divorce courts of one state to make decrees concerning real property in another state. Prior to the decision below, however, no court of one state has been permitted to convey property of another state.

3. THE DECISION BELOW RAISES SIGNIFICANT PROBLEMS OF JUDICIAL IMMUNITY BETWEEN COURTS OF DIFFERENT STATES.

In a footnote to its *per curiam* opinion, the Wyoming Supreme Court relied on the judicial immunity doctrine of *Stump v. Sparkman,* 435 U.S. 349, as a basis for its decision. Such reliance raises two questions suggested by this Court in previous decisions, each of which relates to significant policy questions in regard to that doctrine:

(1) Is there judicial immunity for a judicial act when the court has no subject matter jurisdiction? In its seminal case on the subject, this Court suggested that a distinction must be drawn between a judicial act which

exceeds a court's jurisdiction and one for which the court had no subject matter jurisdiction at all. *Bradley v. Fisher,* 13 Wall. (80 U.S.) 335. Since the Colorado divorce court had no subject matter jurisdiction over the real property, even though it had *in personam* jurisdiction over the husband who owned it, the case raises a pertinent challenge to unrestricted judicial immunity.

(2) Is there judicial immunity with respect to a declaratory judgment action? Although judicial immunity might well preclude Petitioner's damages claim if the Colorado court had subject matter jurisdiction, this case presents the important issue of judicial immunity with respect to equitable relief — in this case a complaint praying for judgment declaring the court commissioner's deed null and void. This Court has held that certain prospective equitable relief, and statutory attorneys' fees, are not precluded by judicial immunity. *Pulliam v. Allen,* 466 U.S. 522. The time has come for the Court to draw clearly the lines defining judicial immunity in the realm of equitable relief.

CONCLUSION

This court should grant certiorari to review the judgment and opinion of the Wyoming Supreme Court.

Respectfully submitted,

CHARLES M. ARON
Post Office Box 1185
Laramie, Wyoming 82070
Attorney for Petitioner

April 8, 1989

APPENDIX A

IN THE SUPREME COURT, STATE OF WYOMING

January 9, 1989

JOSEPH A. MARI,	)	
Appellant *(Plaintiff),*	)	
v.	)	**No. 88-258**
EULA MAE GREEN	)	
	)	
Appellee *(Defendant).*	)	

Appeal from the District Court of Carbon County, the Honorable Larry L. Lehman, Judge.

C.M. Aron of Aron and Hennig, Laramie, for appellant.

Gregg E. Kay, First Assistant Attorney General of Denver, Colorado for appellee.

Before CARDINE, C.J., and THOMAS, URBIGKIT, MACY, and GOLDEN, JJ.

Per Curiam.

As accurately related to the litigants in opinion letter by the Wyoming district judge:

> Joseph A. Mari (plaintiff [and present appellant]) was divorced from his wife pursuant to a decree entered in Logan County, Colorado.

Pursuant to a property division order in that divorce action, plaintiff was ordered to execute a deed to his wife on property located in Carbon County, Wyoming. Plaintiff failed to execute the deed within the specified time, whereupon the Colorado court ordered the Logan County Clerk of Court, Eula Mae Green (defendant [and present appellee]), to execute the deed on plaintiff's behalf.

Plaintiff now complains against the defendant in Carbon County, Wyoming, by way of this action claiming the defendant's action of executing the deed (subsequently filed in Carbon County) granted the court personal jurisdiction over defendant. ***

Defendant Green, a Clerk of Court in Logan County, Colorado, was *ordered* by the District Court in Logan County, Colorado, to execute the deed as a Court Commissioner. There ends her involvement in this matter.

Contrary to the criteria set forth in Anderson v. Perry, 667 P. 2d 1155 (Wyo. 1983), defendant did not purposely avail herself the privilege of acting in Wyoming, nor did her activities have substantial enough connection with the forum state to make the exercise of jurisdiction over defendant reasonable.

This was a simple and isolated act thrust upon the defendant; it was not a voluntary undertaking.

It was, in fact, plaintiff's refusal to comply with an order issued by the Colorado Court (who had in person[a]m jurisdiction over plaintiff) which resulted in the subsequent order appointing defendant as a court commissioner for the purpose of executing the deed. [Emphasis in original.]

We concur with the decision of the district court that there is no personal jurisdiction over the appellee, Eula Mae Green, by virtue of her exercise of responsibilities as directed by the district court in Logan County, Colorado to execute a deed as a court commissioner.[1] *Markby v. St. Anthony Hosp. Systems*, 647 P. 2d 1068 (Wyo. 1982).

The court finds that the original proceedings lacked merit, and that pursuant to W.R.A.P. 10.05 as entitled Costs and Penalties on Affirmance, there additionally is no reasonable cause for this appeal. Consequently, attorney fees as additional costs will be taxed in the amount of One Thousand Dollars ($1,000.00) to be payble to the office of the Attorney General of the State of Colorado.

Affirmed.

---

[1] Similarly emplaced as other bases for this decision are judicial immunity (*Stump v. Sparkman*, 435 U.S. 349, 98 S.Ct., 1099, 55 L.Ed.2d 331, reh'g denied 436 U.S. 951, 98 S.Ct. 2862, 56 L.Ed.2d 795 (1978); Lockhart v. Hoenstine, 411 F.2d 455, 460 (3rd Cir.), cert. denied, 396 U.S. 941, 90 S.Ct. 378, 24 L.Ed.2d 244 (1969) and res judicata (U.S. Const. art. IV, § 1; Barrett v. Town of Guernsey, 652 P.2d 395, 398 (Wyo. 1982)). It is noteworthy that appellant also appealed his earlier divorce decision in the State of Colorado and that appeal did not include a challenge to the jurisdiction of the divorce court against which he now attempts this collateral attack.

Docket entries for the Colorado proceeding, as well as the minimum justification which can be accorded this present proceeding, provide some validity to the comment of the Colorado Court of Appeals in, *In Re the Marriage of Mari*, No. 87CA0357 at 3 (Colo.App. 1988) (not published), which stated:

> Husband also contends that the trial court erred by failing to award him maintenance, because his health and personality problems prevented him from finding and holding a job. We disagree.
>
> Here, there is evidence to support the trial court's finding that the husband's health problems did not restrict him from gainful employment. Furthermore, although the evidence established that the husband had a disagreeable personality, there is also evidence that he chose to be disagreeable. Just as employment based soley in disinclination to work does not mandate an award of maintenance, the court need not award maintenance where the party's unemployment is the result of a voluntary refusal to get along with people.

APPENDIX B

STATE OF WYOMING)		IN THE DISTRICT COURT
	: SS	SECOND JUDICIAL DISTRICT
COUNTY OF CARBON)		Civil Action No. 87C-211

JOSEPH A. MARI,
Plaintiff,

vs.

EULA MAE GREEN, and LOGAN COUNTY, COLORADO,
Defendants.

_____)

ORDER

THIS MATTER having come before the Court upon defendant Eula Mae Green's second motion to dismiss complaint and the Court being well advised in the premises and specifically finding the Court lacks in personum jurisdiction of defendant Eula Mae Green;

IT IS NOW, THEREFORE, ORDERED by the Court that defendant Eula Mae Green's second motion to dismiss complaint be, and hereby is, granted.

DONE IN OPEN COURT 10th day of August, 1988.

/s/ Larry L. Lehman
DISTRICT JUDGE

Copies to:
C.M. Aron
Gregg E. Kay

APPENDIX C

Second Judicial District

Larry L. Lehman
District Judge

July 18, 1988

Mr. C. M. Aron
Aron and Hennig
P.O. Box 1185
Laramie, WY 82070-1185

Mr. Gregg E. Kay
First Assistant Attorney General
Tort Litigation Section
1525 Sherman St., 3rd Floor
Denver, CO 80203

RE: Joseph A. Mari vs. Eula Mae Green, and Logan County, Colorado
Civil Action No. 87C-211

Dear Counsel:

Joseph A. Mari (plaintiff) was divorced from his wife pursuant to a decree entered in Logan County, Colorado.

Pursuant to a property division order in that divorce action, plaintiff was ordered to execute a deed to his wife on property located in Carbon County, Wyoming. Plaintiff failed to execute the deed within the specified time, whereupon the Colorado court ordered the Logan County Clerk of Court, Eula Mae Green (defendant), to execute a deed on plaintiff's behalf.

Plaintiff now complains against the defendant in Carbon County, Wyoming, by way of this action claiming

the defendant's action of executing the deed (subsequently filed in Carbon County) granted the court personal jurisdiction over defendant. I disagree, and find there is no personal jurisdiction over defendant Eula Mae Green.

Defendant Green, a Clerk of Court in Logan County, Colorado, was *ordered* by the District Court in Logan County, Colorado, to execute the deed as a Court Commissioner. There ends her involvement in this matter.

Contrary to the criteria set forth in *Anderson* v. *Perry*, 667 P.2d 1155 (Wyo. 1983), defendant did not purposely avail herself the privilege of acting in Wyoming, nor did her activities have substantial enough connection with the forum state to make the exercise of jurisdiction over defendant reasonable.

This was a simple and isolated act thrust upon the defendant; it was not a voluntary undertaking.

It was, in fact, plaintiff's refusal to comply with an order issued by the Colorado Court (who had in personum jurisdiction over plaintiff) which resulted in the subsequent order appointing defendant as a court commissioner for the purpose of executing the deed.

I request that Mr. Kay prepare an order dismissing this action for lack of jurisdiction over defendant Green; submit to Mr. Aron for approval as to form, and then to this Court for signature. I further request that the order of dismissal be submitted to this Court within the next two weeks.

Respectfully submitted,

/s/ Larry L. Lehman
District Judge

LLL/alm